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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 16th September 1954

S.R.O. 3188.—Whereas the election of Shri Muni Prasad Shukla, as a member of the Legislative Assembly of the State of Vindhya Pradesh from the Rewa constituency of that Assembly, has been called in question by an Election Petition presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by (1) Shri Surya Bali Singh, son of Shri Ravi Raj Singh, Ward No. 3 of Municipal Board, Rewa (2) Shri Bhaskar Dutta Singh, son of Shri Janardan Singh, Ward No. 3 of Municipal Board, Rewa and (3) Shri Lal Ramesh Pratap Singh, son of Shri Jaganath Singh, Ward No. 1 of Municipal Board, (Sudhi Patra), Rewa;

And Whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE ELECTION TRIBUNAL VINDHYA PRADESH AT REWA

ELECTION PETITION No. 1/15 of 1953

1. Surya Bali Singh, S/o Ravi Raj Singh, Elector No. 696, Ward No. 3 of Municipal Board, Rewa, Rewa Constituency, Rewa.
2. Bhaskar Dutta Singh S/o Janardan Singh Rewa, Elector No. 321, Ward No. 3, Municipal Board, Rewa, Rewa Constituency, Rewa, and
3. Lal Ramesh Pratap Singh, S/o Jagannath Singh Rewa, Elector No. 1889, Ward No. 3 Municipal Board, Rewa, Rewa Constituency, Rewa—*Petitioners.*

Versus

1. Muni Prasad Shukla aged about 31 years S/o Mahadeo Ram R/o Uprahti, Rewa.
2. Devt Shankar Khandelwal aged about 45 years, S/o Seth Munlal Pansari, R/o Seva M/s. Munlal Pansari & Sons.
3. Ramzan Khan aged about 40 years S/o Subhan Khan, R/o Rewa Tarahti.
4. Yadvendra Singh aged about 50 years S/o Raghuwar Singh, R/o Rewa Civil Lines.
5. Sheo Kumar Sharma aged about 27 years, S/o Ram Autar, R/o Rewa, Seva Sadan Gurh Road.

(1899)

6. Munshi Singh, aged about 26 years S/o Niranjan Singh, R/o Rewa Gorha Talab, and
7. Hafizuddin Siddique aged about 39 years, S/o Sarfuddin, R/o Tarahti Rewa—Respondents.

PRESENT:—

Shri E. A. N. Mukarji, M.A., LL.B., *Chairman.*

Shri Umashankar Prasad B.A., B.L., *Member.*

Shri J. K. Kapoor, B.A., LL.B., *Member.*

JUDGMENT

By this petition presented to the Election Commission under Section 80 of the R.P. Act, the election of Shri Muni Prasad Shukla, Respondent No. 1 to V.P. Legislative Assembly from Rewa Assembly Constituency at a bye-election held on 31st May, 1953, has been called in question. The three petitioners claim to be the electors of the Rewa Constituency and out of the seven respondents named in the petition, Nos. 6 and 7 are said to have withdrawn their candidature after their nomination papers had been accepted by the Returning Officer. Respondent No. 1 having secured the largest number of votes at the said bye-election was declared elected.

Amongst the various grounds alleged for setting aside the election of Respondent No. 1, as set out in the petition and the particulars attached thereto, the petitioners, in the first place, contend that the constituency of Rewa V.P. Assembly was not constituted in accordance with law, and that the election of respondent No. 1 to the Assembly seat is vitiated by commission of various corrupt practices, namely, offer of bribe to one of the candidates, Ramzan Khan, respondent No. 3 for his withdrawing from the contest, undue influence practised upon the sweepers, by respondent No. 1 who was then the Chairman of the Municipal Board, by holding out a threat to them to have their dwelling houses demolished and their taxes increased, if they did not vote for him; supply of vehicles, e.g. cycle rickshaws, motor cars and jeeps to the voters going to cast their votes to different polling stations, administering oath of the Holy Quran to the Muslim voters to vote for respondent No. 1, suspension of the two Municipal Jamadars who refused to canvass for respondent No. 1 and use of force against the workers and supporters of respondent No. 4 to dissuade them from continuing their work. The petitioners have further urged that the acceptance of the second nomination paper of Shri Muni Prasad, respondent No. 1 and that of Shri Devi Shankar Khandelwal, respondent No. 2 by the Returning Officer, was improper and similarly the rejection of nomination papers filed by Shri Motilal Pancham Lal Jain, Hari Shankar and Hira Lal Saraf by the Returning Officer was wrong and the result of the election has been materially affected by the aforesaid improper acceptance and wrongful rejection of the above nomination papers. It is further contended that the persons whose names did not find place in the electoral rolls were allowed to cast their votes, the same should have been treated as void votes, but it was not done so. Lastly, the return of election expenses filed by respondent No. 1 is characterised as false—in material particulars. On the above grounds the petitioners pray for declaring the election of respondent No. 1 to V.P. Assembly to be wholly void.

Only Respondent No. 1 contested this petition. In his written statement he categorically denied and refuted each of the several grounds for setting aside his election, as set out in the petition. He maintains the validity of the Rewa constituency formed under the President's Order and contends that it is non-justiciable. Petitioners right to present this petition has been challenged by respondent No. 1 on the allegation that the petitioner Nos. 1 and 2 had been registered in the electoral roll of Mangawan constituency and No. 3 in that of Rampur constituency and that they had, as such, exercised their respective franchise therein at the last general election. None of the corrupt practices enumerated in para. 9(a), (b) and (c) of petition were, according to the contesting Respondent 1, committed by him, his agents, canvassers or workers and the petitioners' allegation on this score are characterised as vague and fictitious. The Returning Officer's orders in the matter of accepting or rejecting the nomination papers of the different candidates were, as contended by the respondent just and proper and the Returning Officer is said to have rejected the nomination papers of Shri Motilal, Hiralal and Pancham Lal for valid reasons on the objection of respondent No. 4 at whose instance the present petition is said to have been filed. At any rate, the respondent No. 1 contends that the acceptance of the nomination paper of respondent No. 2 and the rejection of the nomination papers of Motilal, Hiralal and Pancham Lal has not in a way affected the result of the election which has been according to this respondent, fair and free.

Respondent No. 2 has in his written statement supported the respondent No. 1 whereas respondent No. 3 has sufficiently strengthened and corroborated the petitioners' allegations about the corrupt practice of bribery and undue influence mentioned in the petition. These and other pleas will appear from the following issues framed.

ISSUES

Issue No. 1(a).—Are the petitioners entitled to present this petition?

(b) If not, what is the effect?

Issue No. 2(a).—Is the constituency for V.P. Legislative Assembly not constituted in accordance with the law and the Rules?

(b) If not, what is the effect?

Issue No. 3(a).—Did the respondent No. 1 himself, directly or indirectly through his agents, workers, canvassers and supporters commit the corrupt practice of undue influence as set out in para 9(1) (i), (ii), (iii), (iv) of the petition and list 'A' of particulars annexed thereto?

(b) If so, the election of respondent No. 1, void and liable to be set aside on those grounds?

Issue No. 4(a).—Did the respondent No. 1, himself, directly or indirectly, through his agents, canvassers, workers and supporters, commit the corrupt practice of hiring and procuring cycles, rickshaws, motor cars and jeeps, for the conveyance of electors as alleged in para 9(b) of the petition and detailed in list 'B' of particulars?

(b) If so, what is the effect?

Issue No. 5(a).—Did the respondent No. 1 himself, and through his agents, workers and supporters commit the corrupt practice of bribery by offering gratification to a candidate with the object of inducing him to withdraw from being a candidate as alleged in para 9(c) of the petition and list 'C' attached thereto?

(b) If so, what is the effect?

Issue No. 6(a).—Were the nomination papers of Shri Devi Shankar Khandelwal respondent No. 2, and the second nomination paper of Shri Muni Prasad Shukla, respondent No. 1 improperly accepted?

(b) If so, what is the effect?

Issue No. 7(a).—Have the nomination papers of (1) Shri Motilal Jain, (2) Shri Panchamlal, (3) Shri Hiralal, and (4) Shri Harishankar been improperly rejected?

(b) If so, has the result of the election been materially affected thereby?

Issue No. 8(a).—Have votes cast by persons who were not entered as voters in electoral rolls been improperly received as alleged in para. 14 of the petition and list 'D' of the list of particulars?

(b) If so, what is the effect?

Issue No. 9(a).—Is the return of election expenses filed by respondent No. 1, false in material particulars as alleged in para 15 of the petition and details given in list 'E' attached thereto?

(b) If so, what is the effect?

Issue No 10(a).—Has the result of election of respondent No. 1, been materially affected by the improper reception of votes in favour of respondent No. 1, and non-compliance with the provisions of the Constitution, Representation of Peoples' Act, Rules and Orders made thereunder?

(b) If so, what is the effect?

Issue No. 11.—Are the allegations in paras 9(a) (iii) and (iv) and paras 14, 15 and 16 and lists 'D' and 'E' vague, general and ambiguous, and therefore liable to be struck off?

Issue No. 12(a).—Are the petitioners estopped from pleading acceptance and rejection of the nomination papers alleged to be wrongful?

(b) If so, what is the effect?

Issue No. 13(a).—Is list 'D' of the petition not verified?

(b) If so, what is the effect?

Issue No. 14.—To what relief, if any, are the petitioners entitled?

FINDINGS

Issue No. 1(a) & (b).—The contesting respondent has questioned the petitioners' right to present this petition on the allegation that petitioner Nos. 1 and 2 had been during the last general elections, entered in the electoral roll of Mangawan constituency, while the name of petitioner No. 3 found place in the electoral roll of Rampur constituency. The petitioners, on the other hand, claim to be electors of the present Rewa constituency from which respondent No. 1 has been returned. Under section 81 of the R.P. Act an election petition of the present nature can be presented to the Election Commission "by any candidate for such election or any elector in such form and within such time as may be prescribed". The meaning of the word 'elector' has been given in the explanation to section 81. It reads thus.—"A person who was entitled to vote at the election to which the election petition relates whether he has voted at such election or not". The electoral roll of Rewa constituency has been produced before us and exhibited as Ex. P.W. 4/1. A reference to the same discloses that entry No. 696 of ward No. 3 relates to petitioner No. 1 Suryaball Singh, son of Rabiraj Singh. Similarly entry No. 321 of the electoral roll of the same ward No. 3 obviously refers to petitioner No. 2 Bhaskar Dutta son of Janardan Singh. The name of petitioner No. 3 appears to have been subsequently added in corrigenda No. 2 (ex. P.W. 36/3). Here of course there is a printing mistake inasmuch as the name of petitioner No. 3 Lal Ramesh Pratap Singh has been spelt therein as Lakh Ramesh Pratap Singh. It is obviously a typing mistake because the name of his father Jagannath Singh has been correctly stated there. Thus we find that all the three petitioners are 'electors' within the meaning of section 81 of the R.P. Act, and as such they are quite competent to present this petition challenging the validity of the election of respondent No. 1 to V.P. Legislative Assembly at the last bye-election. The petition, therefore, is maintainable.

Issue No. 2(a).—In para 3 of the petition the legality of the constitution of Rewa constituency for V.P. Assembly has been disputed by the petitioners on the ground that "the total strength of the population comprising this constituency was only about 25,000, which is contrary to the provisions of law and order of the President, that actual strength of the electors of the constituency being 14,000 only. Under section 4(2) of the Government of Part 'C' States Act, 49 of 1951, the President has the power to determine the constituency into which such State is divided, as well as the extent of such constituency, the number of seats allotted to each constituency etc. The provision of section 170 of the Constitution of India governs the composition of Legislative Assemblies in Part 'A' States. There is nothing in Part 'C' States Act, 49 of 1951 to indicate that Delimitation of constituencies for Legislative Assemblies therein has to be made on the basis of population or the number of electors. The President's order regarding delimitation of Assembly constituencies in Vindhya Pradesh was published by the Government of India, Ministry of Law's Notification, dated the 15th November, 1951. It has been exhibited before us as Ex-P.W. 31/8 or R.W. 6/1-b. At page 4 of the President's Order we find that the extent of Rewa constituency of the Legislative Assembly is limited to Rewa Municipality. Under Article 329 of the Constitution of India validity of any law relating to delimitation of constituencies or the allotment of seats in such constituency are not to be called in question in any court. Hence we find no substance in the petitioners' objection to the constitution of Rewa constituency in the Order of the President of India referred to above.

(b) In view of our above finding the question involved in clause (b) of this issue does not arise.

Issue No. 3.—In para 9 (a) of the petition the corrupt practice of undue influence said to have been committed by respondent No. 2 is described and enumerated under four heads e.g., (i) By inducing "the Muslim voters of constituency to vote for respondent No. 1 administering the oath of holy 'Quoran' inside and outside the mosque, to vote for none but respondent No. 1". In the particulars under this head the places where such oaths were administered have been named as inside and outside the mosque in ward No. 8, and the mosque at Ghoghar in ward No. 3, between 20th and 30th May, 1953. The persons concerned have been named as respondent No. 1, Sardar Narmada Prasad Singh, and other workers of respondent No. 1. Let us examine both parties evidence on this head.

To prove the allegation on this score the petitioners have examined Ghulam Subhani (P.W. 12), of mohalla Ghoghar who has come forward to say that some 6 or 7 days before the 31st of May, 1953, at about 9 p.m. he had gone to the Masjid of Molvi Aliyaz Ali Khan and soon after the Nimaz was over a meeting was held there which was addressed by 4 or 5 persons to the

effect that the Muslims interests were not properly looked after by the Congress and hence Muslims should swear on oath not to vote for the Congress candidate. Many of the Muslim present there took the oath. The witness however does not speak of the presence of Sardar Narmada Prasad Singh or respondent No. 1 in that meeting because he says that he does not recognise them. P.W. 21 *Ramzan Khan* is the next witness on this point. As stated by him "5 or 6 days before the polling a meeting was held at about 10-30 P.M. in the Masjid of Yasin also known as that of Chhedi. The meeting was convened by Harol Saheb, Shri Siddiqui Vakil and Respondent No. 1 Harol Saheb asked people to swear by Quoran or Roza that they would vote for him. Some took the oath, others did not. Next morning I protested against the taking of oath and holding of meeting in the Masjid. I said this to Mohammad Umar and other Muslims." There is no other direct evidence adduced on behalf of the petitioners in this matter. The statements of this witness has to be accepted with some caution in view of the fact that he is a defeated candidate. P.W. 22 *Mohammad Umar* however, swears to have gone on hunger strike because of the fact that Muslims were made to swear by Quoran in the mosque to vote for P.S.P. candidates and also because two Jamadars had been suspended due to their failure to canvass and influence sweepers to vote for respondent No. 1. The witness alleges to have got leaflets like P.W. 9/2 circulated. Para. 5 of this leaflet refers to the administration of this oath by Holy Quoran to the Muslim voters. It should be borne in mind that the alleged allegation of administering oath to Muslims after the Nimaz in any of the two mosques was not actually witnessed by Mohammad Umar, the author of this leaflet. His information of this incident was based on what he heard from others, may be P.W. 12 or 21. So we have to see how far we can rely on the verbal testimony of the two witnesses, namely P.Ws. 12 and 21 who spoke of this incident as a fact within their direct knowledge. Of course P.W. 21 *Ramzan Khan* is the Secretary of P.W.D. Workers' Union and he was perhaps set up as a candidate for V.P. Legislative Assembly by the Mazdoor Union at the last bye-election. He contested the election and lost. P.W. 12 named *Molvi Aliyaz Ali*, Qazi of the town as amongst those who were present that evening when the Muslims were persuaded to swear by the holy Quoran not to vote for the Congress candidate. *Molvi Aliyaz Ali* has been examined by respondent No. 1 as R.W. 14. The mosque known as Bare Molvi Saheb Ki Masjid was built by his grand father. He has stated on oath that 'I go to that Masjid to perform my Nimaz. During the bye-election no election meeting was held in the premises of the Masjid and no oath was administered to the congregationists as attended the Masjid for "Tarabi" every evening between 8 and 10 P.M. during the month of Ramzan, except for one or two days on the 24th and 25th of Ramzan. Similarly *Dinni alias Shamsuddin* (R.W. 18) resident of Mohalla Katrahas definitely denied the factum of any meeting being held in the mosque known as Sheikh Chhedi's Masjid situated very close to his house, at the time of the bye-election in the month of Ramzan. He further swears to have been present in the mosque from 8-30 to 10-30 P.M. when Tarabi was held after Nimaz during the month of Ramzan. He further asserts that Ramzan Khan did not go to the mosque for prayers during that period. R.W. 38 the contesting Respondent 1 also has denied on oath the petitioners case on this score. Thus the statements of P.Ws. 12 and 21 on this point have been contradicted by the sworn testimony of P.Ws. 14, 18 and 38. We may here observe that the charges about the commission of corrupt practices of bribery, undue influence etc., as enumerated in section 123 of the R.P. Act have to be established by the petitioners conclusively by very cogent evidence of reliable nature. As in a criminal case such charges have to be proved by the prosecution beyond all reasonable doubts, so in the present case the onus primarily lies heavy on the petitioners who bring such charges and we are to weigh the petitioners evidence in the light of these observations. The petitioners' evidence consisting of the verbal testimony of P.Ws. 12, 21 and 22 read with para. 4 of the leaflet Ex-P.W. 9/2 is, in our opinion, not sufficient to prove the petitioners allegation about the exercise of the alleged undue influence upon the Muslim voters by administering oath to them as set out in para. 9(a) (i) of the petition.

(ii) Another act of commission of the corrupt practice of undue influence by respondent No. 1, as mentioned in para. 9(a) (ii) of the petition is the suspension of the two Municipal Jamadars namely *Hiraram* and *Lal Mohammad*. Admittedly respondent No. 1 was the Chairman of the Rewa Municipal Board at the time when he fought the bye-election from Rewa constituency. Both these Jamadars have been examined before us. P.W. 14 is *Hira Ram* while *Lal Mohammad* figures as P.W. 20. As stated by *Hira Ram*, he was suspended because he did not collect Harijan voters of his ward on the 17th May, 1953, in a meeting convened by respondent No. 1 despite the orders of the Head Clerk. In his cross examination *Hira Ram* states that the Head Clerk had ordered him

orally to work for respondent No. 1 in the bye-election and although the witness was unwilling, he carried out the orders. Shri Brij Kishore Prasad, Inspector, was according to this witness, present when the Head-Clerk ordered this witness and Lal Mohammad in his room to work for respondent. No. 1. He further swears to have informed the Health Officer, Mr. Kelkar of it. Lal Mohd. (P.W. 20), also has deposed in the same strain. He too says that he was suspended from service by the then Chairman Respondent, No. 1 on the 20th May 1953, because he had failed to comply with the Head Clerk's order to collect Harijans for a meeting to be addressed by respondent. No. 1 in ward No 9. He too names Shri Brij Kishore, Inspector as amongst those who were present when the aforesaid duty was assigned to him and Hira Lal. This order of their suspension was made a cause of grievance by Mohd. Umar, P.W. 22 who subsequently went on hunger strike. Admittedly Mohammad Umar was not present when Municipal Head Clerk is said to have directed these Jamadars to work and canvass for respondent No. 1. R.W. 32 the Head Clerk of Rewa Municipality denied (on oath) to have ever asked Hira Ram and Lal Mohammad Jamadars to canvass for respondent, No. 1 either of his own accord or under the direction of respondent No. 1. Shri D. S. Kelkar, officiating Health Officer of Rewa Municipal Board also has pledged his oath as R.W. 27 to the following effect.—“Respondent No. 1 never asked him or the other employees of the Municipal Board to canvass for him during the bye-election. I know Hira Ram and Lal Mohammad. Both of them were officiating Jamadars at the time of the bye-election. They never told me that the Head Clerk had told them that he was directed by the Chairman (respondent No. 1), to ask the employees to canvass for him”. R.W. 23 Baikunth Prasad is another clerk of the Municipal Board. His evidence also is in substance the same as that of R.W. 27. This witness however, adds that the cause of their suspension was that the Chairman found them canvassing in his favour in ward No. 9 which the Chairman considered to be improper. The Chairman's order suspending these two Jamadars has been proved before us and marked Ex. R.W. 32/1. The reason of their suspension as noted in this order does not at all support the statements of the two Jamadars regarding this matter, rather it shows that these 2 Jamadars were suspended because they had attended an election meeting. No great importance should be attached to the explanation Ex. R.W. 32/2, submitted by the two Jamadars later, because in order to save their skin they could very well throw the blame on the Chairman who had suspended them. Similarly the contents of the leaflet Ex. P.W. 9 referring to the cause of Jamadar's suspension has little evidentiary value because P.W. 22 issued this leaflet on other's report and under the direction of the President of his Sarvajanik Sabha. So in view of the sworn testimony of the three respondents witnesses Nos. 23, 27 and 32, read with the denial on oath of the above allegation by respondent No. 1 himself as R.W. 38 and that of Shri Bhagwan Dutta Shastri R.W. 26 who was then the Vice Chairman of Rewa Municipality, we find ourselves unable to uphold the contention of the petitioners regarding the exercise of the aforesaid undue influence upon the two Jamadars.

(iii) Under head (iii) of para. 9(a) of the petition it is alleged that some workers and supporters of respondent No. 4 were belaboured in order to dissuade them from working for him. In the particulars pertaining to this sub-para Sardar Narmada Prasad Singh and Chunnan Guru are named as perpetrators of this act of violence in polling booth of R. T. College on 31st May 1953, while Rajendra Prasad is named as victim. P.W. 7 Rajendra Prasad Sharma is the only witness who affirms to have been working for respondent No. 1 at polling station in R. T. College on the day of poll. His duty was to issue slips to voters who arrived there after comparing their names and particulars with the electoral roll. He further states that at about 1-30 p.m. he saw two or three men getting down from Harol Saheb's car. They asked the witness to go to Harol Saheb who was sitting in his car and wanted to speak to this witness. When the witness refused, these men threw the electoral roll and tried to drag him towards the car. 2 or 3 others pushed him from behind. Shri R. N. Misra Polling agent of respondent No. 4 luckily turned up. Shri Misra spoke to Harol Saheb and subsequently made a report of the incident to the D.S.P. The duplicate copy of that report is Ex. P.W. 7/1, S. D. entry Ex. P.W. 6/1, is based on Mr. Misra's report Ex. P.W. 7/1. The above statement of P.W. 7 Rajendra Prasad stands wholly uncorroborated, inasmuch as Shri R. N. Misra, who wrote the report Ex. P.W. 7/1, has not been examined, before us on behalf of the petitioners. P.W. 34, Shri Lal Yadvendra Singh (Respondent No. 4) affirms to have noticed Rajendra Prasad weeping when Shri Lal Yadvendra Singh visited the polling booth in R.T. College in the afternoon of the day of polling. Shri R. N. Misra reported to this witness (P.W. 34), that the trouble had started because Harol Saheb was having that boy dragged towards his car. Evidently knowledge of Shri Lal Yadvendra Singh in regard to this matter is based on the report of Shri R. N. Misra who has not come

forward to corroborate the testimony of P.W. 7 Rajendra Prasad in this matter. So it is difficult for us to accept the petitioners version about the assault upon Rajendra Prasad a worker of respondent, No. 4 in order to force Rajendra Prasad to give up his work and support for respondent No. 4.

(iv) In sub-para. (iv) of para. 9(a) of the petition it has been asserted by the petitioners that threats were held out to sweepers and other residents of this constituency coercing them thereby to vote for respondent No. 1 on pain of demolition of their dwelling houses and increment of their house tax by respondent No. 1 as Chairman of the Municipal Board. The places where these threats were held out as mentioned in particulars is ward No. 9 of Rewa Municipality. Other particulars pertaining to this charge were lacking. Virtually no evidence has been adduced by the petitioners in proof of their above allegation. Shri Ramzan Khan P.W. 21 is the only witness who affirms to have seen Respondent No. 1 and the Secretary Municipal Board, going to the houses of sweepers and threatening them with dismissal if they did not vote for respondent No. 1. This he says was on 27th or 28th of May, 1953. His above testimony stands wholly uncorroborated. Moreover, penalty for disobeying this order of the Chairman as embodied in sub-para. (iv) of para. 9(a) of the petition is different from that stated by P.W. 21 in his above quoted statement in chief. Further the witness has modified his statement in chief when "Respondent No. 1 and the Secretary did not go to the separate houses of the sweepers but collected them at one place in front of their houses ———. I did not report to any one about the threat or pressure held out by the Secretary, Municipal Board." Thus we find that the alleged threat was not held out by respondent No. 1, as Chairman but by his Secretary. As stated above, petitioners evidence in proof of his allegation on this score is very meagre and unsatisfactory and hence wholly unreliable.

As a result of our above findings on the four heads of the acts of undue influence said to have been exercised by respondent No. 1, the issue as a whole is decided against the petitioners.

(b) The question involved in part (b) of this issue does not, therefore, arise.

Issue No. 4(a) & (b).—As stated in para. 9(b) of the petition, respondent No. 1 himself or through his agents, canvassers, workers and supporters is said to have hired and procured rickshaws motor cars and jeeps for conveying electors to various polling stations in the constituency. In list (b) pertaining to this para. the names of the rickshaw pullers have not been given. Only the date has been stated as 31st May, 1953. It is further stated there—in that report regarding supply of such cycle rickshaws was made to the police and the Presiding Officers. One station wagon belonging to P.S.P. and another station wagon No. U.S.G. 4797 belonging to Sardar Narmada Prasad Singh have been mentioned as procured for carrying voters to various polling stations on the same date namely the 31st May, 1953. In support of their above contention the petitioners have examined 8 rickshaw pullers who figure as P.Ws. 2, 5, 15, 16, 18, 19, 24 and 26. P.Ws. 3, 10, 11, 13, 17, 23, 28 and 29 are the electors who assert to have been supplied with rickshaws on the date of poll by particular workers of P.S.P. P.Ws. 21, 27, 32, 33, 34 and 37 affirm to have seen electors being conveyed in rickshaw, to different polling stations. Of these P.W. 27 is the Presiding Officer of Ghoghar P.S. before whom complaint on this score were filed (*vide* Ex. P.W. 4/56A and D), and the receipt Ext. P.W. 27/1.

P.W. 2 Din Dayal avers to have been plying rickshaw No. 30 of Mohd. Raza at the time when he was engaged by Th. Kamleshwar Singh a day before the date of polling to carry voters to the polling booth from Bichhiya.

P.W. 19 Laloo also alleges to have been engaged for the same purpose at the instance of Hanif. He carried passengers from Bichhiya to the polling station Martand Lancer. A sum of Rs. 5 is said to have been paid to Din Dayal by Th. Kamleshwar Singh in the evening, whereas the remuneration of Laloo (P.W. 19) still remains unpaid.

Th. Kamleshwar Singh (P.W. 13) denies to have engaged Din Dayal's rickshaw or to have directed him to carry voters from Bichhiya.

Similarly R.W. 20 Hanif contradicts P.W. 19 in the matter of hiring his rickshaws and directing him to carry voters to the polling booth Martand Lancer.

Mohammad Raza R.W. 36 has stated before us on oath that Din Dayal (P.W. 2) never took or plied his rickshaw during the month of May particularly on the 31st May, 1953. Chhotu Bhaiya of Lanka Dain has been named as the owner of the rickshaw which P.W. 9 was plying. Shri Madho Saran alias Chhotu Bhaiya has been examined on behalf of respondent as R.W. 22. He definitely

denies to have let out his rickshaw to any one on hire. He has got a private rickshaw for his personal use and the same is not plied on hire. Further on reading between the lines of evidence of the Municipal Head Clerk (R.W. 32) we find that rickshaw No. 30 was registered in the name of Badri Narain and not in the name of Md. Raza or Din Dayal (P.W. 2) in Municipal Register of 1953-54. Thus the evidence of P.W. 2 and 19 have been amply contradicted by the sworn testimony of R.W. 13, 20, 22, 32 and 36.

Next the three rickshaw pullers P.Ws. 5, 15 and 26 assert to have carried voters from Katra Mohalla to the polling station at Khatkahal. As stated by P.W. 5 Asseria, he was plying rickshaw of Kamta Prasad Pande while Mohd. Husain (P.W. 15) names Janardan Prasad Pleader as the person who engaged his rickshaws for the 31st of May and on that day he took P.W. 15 with his rickshaw to Katra near Jain Dharamshala. P.W. 26 says that he had been engaged by a red capped man, Kamta Prasad (P.W. 35) has stated on oath that he had taken all his 5 rickshaws to Maihar in the month of March. From there he took them to Jabalpur where his four rickshaws were being plied on hire throughout the month of May and June. He has produced receipt for the license fee paid by him at Jabalpur Ex. R.W. 25/1 as also the licenses Ex. R.W. 35/2 to 5. He did not secure license for his 5th rickshaw because it had been lying out of repairs. Further Kamta Prasad appears to have been at Jabalpur in the month of May and not in Rewa. Thus he falsifies the statement of P.W. 5. Then according to P.W. 5, he was paid his hire by Mr. Siddiqi in the evening. Mr. Siddiqi (R.W. 6) has been examined to refute the statement of P.W. 5. Similarly the testimony of P.W. 15 Mohd. Husain is contradicted by R.W. 31 Janardan Prasad Mr. Pancham Lal P.W. 33 and Respondent R.W. 38, respondent No. 1. Further the number of rickshaw as given by P.W. 15 is 86 whereas in the year 1953-54 only 46 rickshaws were entered in the Municipal Register Dadoo Sonar, the alleged owner of the rickshaw which P.W. 26 claims to have been plying on the 31st May has been examined before us as R.W. 24. He has named Pande, Bhagwan Singh and one Lonika of Satna and a Gond of Amarpur who had been driving his rickshaws last year. Thus by implication these R.W. 15 refutes the above statement of Ramnath P.W. 26.

P.W. 16 Abdul Majid claims to have been driving a rickshaw of Luqman who owns about 16 rickshaws plied on hire. As stated by this witness all the 16 rickshaws of Luqman had been reserved by Harol Saheb for the 31st May. P.W. 16 was sent to the house of Shri Jagdish Chandra Joshi who took him to Durbar College polling booth. The charges of his rickshaw to the extent of Rs. 4/8 is said to have been paid to him by Luqman the next morning. His brother Hamid also is said to have been working with Majid P.W. 16. Shri J. C. Joshi R.W. 16, Luqman R.W. 5 polling agent of respondent No. 2 at Durbar College also swears to have been mostly outside the polling on the date of poll and noticed no voters being carried out in rickshaws to that place. So no reliance can be placed on the evidence of P.W. 16.

Lastly the two rickshaw pullers P.Ws. 18 and 24 affirm to have plied their rickshaws on 31st May for carrying voters to polling booth in Ghoghar School. P.W. 18 names Parbhoo Charan as the person who took him to Shri J. C. Joshi and the latter ordered him to carry people from there to Ghoghar School polling booth. P.W. 24 Ram Khelawan who was then plying the rickshaw of Dadoo Sonar states to have been engaged by Th. Kamleshwar Singh pleader to carry voters from Ghoghar Mohalla to the polling booth there. As stated above Dadoo Sonar R.W. 24 denies to have ever given his rickshaw on hire to Ramnath P.W. 26. Similarly R.W. 16 Shri J. C. Joshi denies to have given any direction to this rickshawwala for carrying voters to the polling booth. In this connection it has been pointed out by respondent 1 that the electors of Ghoghar School polling booth all lived within a distance of 1 or $1\frac{1}{4}$ furlong.

We may observe here that it has been elicited in the cross examination of several of these rickshaw pullers witnesses that their driving license fee was raised to Rs. 7/8 during the regime of respondent No. 1, Chairman of Rewa Municipal Board. Several of these rickshaw pullers went on hunger strike as a protest against the enhancement of the driving license fee. Admittedly therefore they had some grievances against respondent No. 1, maybe that they have come to depose against respondent out of that spite.

As regards P.Ws. 13 and 17 who affirm to have been supplied with rickshaws for going to polling booth at Martand Lancer, it has been suggested to them in their cross examination that they have come to depose under the influence of Ramgopal Bilauhan a worker of the Congress. Shri Prakash Narain R.W. 2 who is said to have supplied rickshaw to these persons has deposed before us in complete denial of the above statements of P.Ws. 13 and 17. P.Ws. 10 and 11

over to have been carried in rickshaws to polling booth Kachhehry. No rickshaw puller has been examined before us who carried these voters to that polling booth. As stated by P.W. 10 Hargovind Singh saw him getting down the rickshaw. Hargovind Singh has not been examined. The statement of P.W. 3 to the effect that he along with his wife, in rickshaw to cast their votes in Durbar College booth on the 31st May 1953 and that the rickshaw had been, according to P.W. 3, supplied by a red cap man. P.W. 23 and 28 affirm to have carried in rickshaws to R.T. College booth. P.W. 23 and 28 named Shri Bhagwan Dutta Shastri as the person who got them seated in rickshaw. Still P.W. 23 could not state the colour of Shri Shastri Ji's complexion. Shastri Ji (R.W. 26) denies to have engaged or supplied any rickshaw to any of these voters. Further R.W. 28 swears to have been paradeshi P.W. 28 going on foot to R.T. College. So in view of the discrepancies in the evidence of several P.Ws. referred to above and the denials of their statements by respectable witnesses examined on respondents behalf we do not feel fully satisfied about the truth of the petitioner's case regarding the supply of cycle rickshaws to the electors by respondent No. 1 his workers or agent on the polling date of his bye election i.e. 31st May 1953.

As regards procurement of station wagons for carrying voters to different polling stations by respondent No. 1, his agent, workers and supporters, List 'B' of the particulars enumerates two such station wagons (1) pointed with letters P.S.P., and the other (2) bearing No. USJ 4797. Harol Saheb or Shri Narbada Prasad Singh is said to be the owner of the station wagon No. USJ 4797.

To prove their case on this score the petitioners have examined P.Ws. 32 to 34, 36 and 37 and got their written complaints filed in this behalf exhibited as P.W. 4/56(a) to (c).

P.W. 32 was the polling agent of respondent No. 4 Shri Yadvendra Singh at Ghoghar School polling booth. He says that in the afternoon of the date of polling, hearing a 'hulla' he went out of the polling booth and saw some female voters alighting from the station wagon of Harol Saheb. Those females 4 or 5 in number, were, according to P.W. 32, of the family of Hanumatash Prasad Pleader and were pointed out to the Presiding Officer by this witness. The complaint Ex. P.W. 4/56(a) written out by Shri Ram Sajiwan, R.W. 37, also was presented to the Presiding Officer then and there. The same station wagon is said to have made three such trips carrying voters to Ghoghar School polling booth and at one such trip P.Ws. 33 and 34 also were present. The other two complaints Ex. P.W. 4/56(b) and (c) were similarly written out and filed before the Presiding Officer. P.W. 33 Shri Lal Behari Singh and P.W. 37 Shri Ram Sajiwan, both M.L.As., Petitioner No. 1, P.W. 36, as also respondent No. 4, P.W. 34, swear to have seen Harol Saheb's station wagon No. USJ 4797 bringing voters to Ghoghar School booth. We also gather from their evidence that there was a sort of quarrel between workers of P.S.P. and those of the Congress candidate over it. The latter are said to have cordoned the station wagon but at the instance of P.W. 34 it was allowed to be driven away, because written complaints to that effect had been filed before the Presiding Officer. P.W. 6 Deputy Superintendent of Police then on duty alleges to have learnt from others that voters were being carried in rickshaws and motor cars to Ghoghar School polling booth and directed the Inspector in charge to enquire into the matter and report P.W. 27 the Tehsildar who worked as Presiding Officer at that booth admits to have received the complaint Ex. P.W. 4/56(b) to (d) and granted receipt therefor Ex. P.W. 27/1. He himself did not see any voter being carried in any conveyance nor did he make any enquiry about it. Of course the Police Inspector who had been directed by the Deputy Superintendent of Police to enquire and report about this complaint has not been examined. It has been urged before us by respondent No. 1 that the electors who were to cast their votes in Ghoghar School polling booth lived within a distance of a few hundred yards from the polling booth and as such needed no conveyance. But in this connection we should not lose sight of the fact that females of respectable families would not desire to walk on foot in the scorching heat of the mid-day sun in the month of May, particularly on the last day of it. Respondent No. 1 has further argued before us that the complaint Ex. P.W. 4/56(a) to (c) were written out and filed in the afternoon in consultation with and under the direction of respondent No. 4 when the latter returned from Bichhiya polling booth where he secured the least number of votes. Respondent No. 4 felt that he was losing and so he got these complaints filed in order to prepare ground for setting aside the election by means of an election petition. This argument cannot hold water in view of the fact that respondent No. 4 lost the election by less than 200 votes.

The contesting respondent No. 1 has, on the other hand, examined Rameshwar Prasad Agarwal (R.W. 12) who says that his youngest daughter Ram Rati, though a P.S.P. worker, never went to any polling booth on the polling day. Kanhaiya Lal (R.W. 21) the driver of the station wagon No. 4797 swears to the said station wagon being out of repairs on the date of poll. According to this witness Harol Saheb's son Kr. Krishna Pratap Singh, is the owner of that station wagon and under his orders the station wagon was taken to Baikunthpur 2 or 3 days before the date of poll and it lay there for 4 or 5 days during which period it was repaired by Mewalal. The latter (R.W. 30) has supported the driver Kanhaiya Lal in the matter of the station wagon No. USJ 4797 being repaired at Baikunthpur on the day of poll. The statements of these two witnesses are amply belied by the sworn testimony of R.W. 12 who asserts to have seen the station wagon of Harol Saheb near Chauhatta of this town on the date of poll viz., 31st May 1953. R.W. 33, wife of Panchamall Jain as well as R.W. 37 wife of Hanumatesh Prasad assert to have walked to the polling booth in Sabzimandi to cast their votes at the last bye-election. R.W. 34, Ram Rati, daughter of Shri Rameshwar Prasad Agarwal denies to have gone to Ghoghar School booth on the day of poll. These witnesses or their husbands were P.S.P. workers. R.W. 38 is respondent No. 1 himself. He denies to have supplied any sort of conveyance to any of the electors directly or through his agents, workers and supporters. As stated by him one station wagon painted outside with words 'P.S.P.' was used on the day of poll for supervision work only but the station wagon No. 4797 was not in Rewa on the date of Poll. R.W. 13 Lal Kamleshwar Singh, another ardent worker of P.S.P. similarly denies to have noticed the station wagon in question near about Ghoghar School booth. He says it was never used for carrying voters to polling booths. All these are interested witnesses and hence we have to accept their statements with great caution.

So, on an analysis and close examination of the above evidence adduced by both parties on this point, we find that the petitioner's evidence regarding the procurement of station wagon No. USJ 4797 for conveying some female voters to the polling booth find sufficient corroboration from the above quoted admission of R.W. 12 coupled with written complaints and hence we hold that some female voters were carried in that station wagon to the Polling booth Ghoghar School. We decide this part of issue No. 4 accordingly in Petitioner's favour.

Issue No. 4(b).—The effect of our above finding about commission of a corrupt practices under sec. 123(6) of R.P. Act, is that it vitiates the election of respondent No. 1.

Issue No. 5(a) & (b).—In para 9(c) of petition and list C of the particular attached to the petition it has been definitely alleged that respondent No. 1 himself, through his agents canvassers, workers and supporters committed the corrupt practice of bribery by offering gratification to Ramzan Khan candidate (respondent No. 3) at the said election with the object of inducing him to withdraw his contest. Ramzan Khan is the solitary witness examined on behalf of the petitioners in proof of this charge. His statements on this score are as follows:—"On the 30th May, 1953 at about 8 or 8-30 A.M. I was in my Union Office when Ghulam Rasool came twice to call me saying that Harol Saheb wanted to see me. Harol Saheb was sitting in his car with Shri Muni Prasad respondent No. 1 as well as a driver. Harol Saheb said to me "You are standing on behalf of Mazdoors, so am I. Both the parties are in reality the same although the names are different. You take Rs. 5,000 and withdraw". I said I would not do so. Thereupon respondent No. 1 said to me "you are getting Rs. 5,000/-, better withdraw, I refused". As elicited in the cross-examination of this witness, no one else was there at the time of the above conversation between him and Harol Saheb together with respondent No. 1. The latter has in his evidence as R.W. 38 made a clear denial of such an offer by himself or Harol Saheb. It will be highly unsafe to hold the corrupt practice of bribery as proved on the verbal testimony of Ramzan Khan (respondent No. 3) who was defeated at the last election and filed a written statement entirely supporting the petitioners case. Graver the charge stricter the proof is a very broad and common principle of law laid for the guidance of a judge who is called upon to decide questions of such a nature. Accordingly we find that the petitioners have miserably failed to establish the commission of corrupt practice of bribery by respondent No. 1 his workers or agents. The issue is accordingly answered in the negative and consequently the question involved in part (b) of this issue does not arise.

Issue No. 6(a) & (b).—In para 10(a) of the said petition acceptance of the second nomination paper of respondent No. 1, Shri Muni Prasad Shukla by the Returning Officer has been challenged and characterised as wrong and improper. True, the first nomination paper of Shri Muni Prasad Shukla (respondent No. 1)

was rejected by the Returning Officer on 25-4-53, on the ground that the No. '40' given on the left side of his name is not the serial No. of the electoral roll but it appeared to be the house number. On a reference to Shudhi Patra No. 2 the Returning Officer found that the name of Shri Muni Prasad Shukla would be at S. No. 34, hence the Returning Officer found that the serial No. of the Electoral roll was wrongly entered in the first nomination paper filed by Shri Muni Prasad Shukla on reference to the Returning Officer's order Ex. P.W.4/34 passed on the second nomination paper of Shri Muni Prasad Shukla Respondent No. 1, in which the same serial No. of the electoral roll namely '40' was stated, we find that this nomination paper of Respondent 1 was accepted by the same Returning Officer on 27-4-1953. The reasons for acceptance as contained in his order dated 27th April, 1953 Ex. P.W. 4/34 reads as follows:—

"So far as the question of appearing the name of Shri Muni Prasad Shukla in the electoral roll is concerned, there is no doubt and there is no doubt about his identity also. So far as the question of omission of his serial number in the electoral Roll in the nomination paper is concerned, the law is now absolutely clear that it is only a technical defect and not a defect of substantial character..... The latest law on the subject in my opinion now seems to be that if there is no doubt about the identity of the candidate and his name appearing in the electoral roll, his nomination paper should be accepted by the Returning Officer and he should have opportunity of going before the electorate and securing their verdict". The Returning Officer in accepting the second nomination paper of respondent No. 1 on the grounds quoted above has referred to the decision of Bombay Tribunal published in the *Gazette of India* dated 15-11-52 at page 2423. We too are of the opinion that the learned Returning Officer was right in passing his orders accepting the nomination paper of respondent No. 1 and hence the acceptance of Shri Muni Prasad's nomination paper cannot be said to be wrongful or improper.

The validity of the Returning Officer's order accepting the nomination paper of respondent No. 2 Shri Debi Shankar Khandelwal is challenged on the ground that the said respondent No. 2, being a partner of the Firm styled as Munna Lal Pansari & Sons, Satna, which firm holds contracts for the execution of some work on behalf of V. P. Government, is disqualified for being chosen as a member of the V. P. Legislative Assembly. No evidence whatsoever has been adduced by the petitioners to prove that the aforesaid Firm of M/S Munnalal Pansari and Sons, Satna, holds some contracts for work under V. P. Government, or that respondent No. 2 was a partner of that firm, in the execution of the alleged contract of the State Government. In absence of any such evidence, respondent No. 2 cannot be found to be disqualified for contesting a seat to V. P. Assembly and as such his nomination paper was rightly accepted by the Returning Officer. The issue as a whole is, therefore answered in the negative and decided in favour of the contesting respondent. In the result of our above findings the second question as embodied in para 6(b) becomes immaterial.

Issue No. 7(a).—It has been very keenly and strongly contended on behalf of the petitioners that the nomination papers of Sarvasri Motilal Jain, Panchamlal, Hiralal and Harishankar were wrongly rejected by the Returning Officer and the result of the election has been materially affected by reason of the said improper rejection of their nomination papers. We propose to deal with the case of rejection of each of the above named persons separately in seriatim.

On a reference to the nomination paper of Shri Motilal Jain Ex. P.W. 4/14 we find that one Sohan Lal was his seconder. Objection was taken in regard to the identity of the aforesaid seconder Sohan Lal on the ground that his name was entered in the electoral roll as "Soham Lal" at S. No. 801 ward No. 2. This objection was upheld by the Returning Officer who rejected the nomination paper of Motilal on this ground (*vide* Ex. P.W. 4/A). We too find that in the house No. 324 lived four electors mentioned against S. Nos. 801 to 804. As against entry No. 801 the name of 'Soham Lal' son of Sukhchand is mentioned. The next entry No. 802 relates to wife of Sohan Lal. Obviously therefore the letter 'M' in the name Sohan Lal against entry No. 801 was a mistake and misprint for the letter 'n' in Sohan which was the real name of Motilal's seconder and so signed Sohan Lal in col. No. 16 of Motilal's nomination paper (*vide* Ex. P.W. 4/14.) The Returning Officer should have satisfied himself if he had any doubt about the identity of Sohan Lal when the latter was produced before him in court at the time of scrutiny.

Shri Motilal (P.W. 9/1) has proved the authority which he gave to Mohd. Umar who represented him at the scrutiny of the nomination paper *vide* Ex. P.W. 9/1. Under this authority Shri Mohd. Umar (P.W. 22) took time to produce Sohan Lal not present before the Returning Officer on the first date of scrutiny

namely 25th April, 1953. On the next date fixed by the Returning Officer, viz., 27th April 1953, Sohan Lal appeared before the Returning Officer, acknowledged his signature on the nomination paper and told that no other person known Sohan Lal except himself resided in that ward. Since the voter's father's name as well as the number of the house in which Sohan Lal, the seconder of Shri Motilal's nomination paper, were given in the electoral roll, the Returning Officer could have very easily ascertained the identity of Motilal's seconder and removed his doubt about the misprint of the letter 'm' in place of 'n' in the name of Sohan against entry No. 801 in the electoral roll by questioning Sohan Lal and the persons who came to identify him. P.W. 9 Motilal swears that entry No. 801 in the electoral roll relates to his seconder Sohan Lal, S/o Sukh Chand who was produced before the Returning Officer on the date of scrutiny P.W. 22 Md. Omar states on oath that on the date of scrutiny Sohan Lal appeared before the Returning Officer and he was the same Sohan Lal whose name appears at S. No. 801 of the electoral roll. P.W. 34 Shri Yadvendra Singh similarly swears that on the second date of the scrutiny when Sohan Lal was produced before the Returning Officer he was identified by him (P.W. 34) Panchamlal (R.W. 9) the latter also admits that the same Sohan Lal appeared before the Returning Officer on the date of scrutiny. In light of this evidence non-examination of Sohan Lal before this tribunal loses all its importance. As provided in section 36(4) of the R. P. Act, the Returning Officer is not to reject any nomination paper for the reason of any technical defect which is not of a substantial character. To judge as to whether defect to material or not the Returning Officer while scrutinising a nomination paper should ascertain the identity and eligibility of the candidate, the proposer and seconder etc. by comparing the particulars given in the nomination paper with those in the electoral roll. This object could be achieved without much difficulty had the Returning Officer cared to verify the parentage and residence of Sohan Lal, with those given in the electoral roll against entry No. 801. It has been repeatedly pointed out in the various decisions of different Tribunals that trivial mis-descriptions should be condoned. "The generally recognised rule is that meticulous accuracy is not necessary and substantial compliance with the rules should be regarded as sufficient." It is not necessary to quote a large number of decisions on this point, we may, however, refer to a few of them. In Sitapur Distt. (Est. G. R.) 1937, reported in Duabia's Vol. II, page 217 omission to write Agrawal against the name in nomination paper though written in the electoral roll was held immaterial. Similarly in South East Punjab (Sikh) 1947 reported in Duabia's Vol. I at page 77 the rejection of nomination paper,—the name of the candidate's father was written as Kandhaiya Singh in the electoral roll but as Ghanaiya Singh in the pleader's license was held invalid on the ground that in the circumstances of the case there can be no reasonable doubt about the identity of the candidate. There are various decisions in regard to cases of discrepancies in spelling etc. *vide Gazette of India*, dated 24th January 1953 at p. 208 and 209 and that date 3rd February 1953 at pp. 286 and 289. Hence we find that the Returning Officer was not justified in rejecting the nomination paper of Motilal simply on the ground that the name of his seconder Sohan Lal had been recorded as Soham Lal in the electoral roll which was obviously a misprint.

As regards the respondent's objection to the effect that Motilal had been disqualified by the Election Commission at the time of the last general election held in 1952, we may note that the same has been abandoned at the time of argument.

It has however been urged by Respondent No. 1 that Motilal's nomination paper was invalid because Motilal had selected symbol of 'Pushpraj' which is not in the list of symbols. This objection had been considered by the Returning Officer and rightly disallowed. 'Flower' is one of the symbols prescribed in the list 'Pushp' means flower 'Raj' added to it signifies good or king of flowers. This would not in our opinion invalidate Motilal's nomination paper.

Next, we note that the nomination papers filed by Pancham Lal and that by Hiralal Saraf Exs. P.W. 4/15 and P.W. 4/19 respectively were rejected by the Returning Officer on the ground that their names appeared in the list of assessors which according to findings of the Returning Officer, was an office of profit and consequently both these candidates were not qualified for offering themselves as candidates for the Assembly election. In this matter the Returning Officer relied upon the findings of the Election Commission published in the *Gazette of India*, dated 2nd April 1953 Part III, at pages 1015 to 1027 and held that because both these candidates were assessors and residents of Rewa town, and could draw daily allowance of Rs. 2 per day for the days that they served as assessors, they held an office of profit, which rendered them disqualified for their candidature to V. P. Legislative Assembly *vide* Ex. P.W. 4/B and P.W. 4/J. The

decision of the Election Tribunal, Bhopal published in the *Gazette of India*, dated 6th January 1953 at pages 29 to 35 was distinguished by the Returning Officer on the ground that the person who acted as assessor in that case was not paid any allowance there. As against this the learned lawyer for the petitioners has referred us to the decision of Barnala Tribunal published in *Gazette of India*, dated 1st July 1953 at pages 2213—15 and also in the *Gazette*, dated 14th July 1951 at page 2293 onward. In the last case Rs. 5 were paid to the assessors as their daily allowance and T.A. Still the Tribunal found that because the person concerned had not voluntarily accepted to act as assessor but was made to serve as assessor under section 319 Cr. P. C. he could not be said to hold an office of profit. The passage in Article 102(10)(a) of the Constitution of India "If any one holds an office of profit under the Government of India or the Government of State", has been held to imply that he does it voluntarily whereas section 319 of Cr. P. C. casts liability upon a person between 21 and 60 years of age to serve as assessor if he is so chosen by the Distt. Magistrate in consultation with the Distt. Judge. As evidenced by Ex. P.W. 1/1 Rs. 2 per day is paid in V. P. to the assessors living within five miles of the Sessions Court as diet money and T.A. Because an assessor has to serve as such compulsorily if he is called upon to do so, he cannot be said to draw the sum of Rs. 2 paid to him as his diet money and T.A. This point of distinction should not be lost sight of while considering the order of the President based on the opinion of the Election Commission in the *Gazette of India* dated 2nd April 1953. We may further note here that Hiralal made frantic efforts to get his name removed from the assessors list and there is nothing before us to indicate that he ever acted as an assessor in any case.

So considering the above facts and circumstances of the case and the evidence led on the point we are definitely of opinion that the nomination papers of Motilal Jain, Hiralal Saraf and Pancham Lal Jain were wrongly and improperly rejected by the Returning Officer.

(b) This leads us to the question of far reaching importance e.g. whether the result of the bye-election of Rewa constituency held on 31st May 1953 has been materially affected by the improper rejection of the nomination papers of the three candidates named above i.e., Motilal, Hiralal and Pancham Lal. It is well settled law that strong presumption of the result of election having been materially affected by wrongful rejection of a nomination paper arises and the onus to prove that the result has not been affected thereby lies heavily on the successful candidate viz., respondent No. 1 in this case (*vide* cases reported in the Indian Election cases by Sen and Poddar at pages 5, 74, 110, 122, 208, 604, 715). Also *Gazette of India*, dated 15th October 1952 at page 2293, 20th October 1952, at page 2311, 27th November 1952, at page 2484, 20th December 1953, at pages 151—53, 6th March 1953, at page 727, and 7th April 1954 at pages 594-95. Respondent No. 1 while arguing his case has pointed out to us that in view of Section 100(1)(c) of the R. P. Act which places both the cases of wrongful or improper acceptance as well as wrongful rejection of nomination papers in the same category and at the same footing, no such presumption should be raised in petitioners' favour and so the petitioners should be called upon to prove that the result of the election, in the present case, was materially affected by the wrongful rejection of these nomination papers. He has referred us to the following decisions reported in:—

1. *Gazette of India*, dated 24th April 1953 at page 1461.
2. *Gazette of India*, dated 12th June 1953 at page 1927.

In the first case the members of the Tribunal no doubt found it difficult to make any difference between the case of improper acceptance and that of improper rejection of nomination paper, but in the end they on the principle of *State decisis* held that the rejection of nomination paper raises an initial presumption that the result of the election has been materially affected and it requires strong and convincing evidence to rebut it. We have not been able to find out a copy of the *Gazette of India* (Extraordinary) of the 12th June, 1953, containing the decision of Bikaner Tribunal relied upon by the contesting respondent.

The trend and gist of the various decisions of the different Tribunals on this point has been to the effect that irrespective of the chances of success or failure of the rejected candidate and even of the fact that he after the rejection of his nomination paper worked for a particular candidate, a strong presumption of the result of the election having been materially affected by reason of the rejection of a nomination paper has to be raised and that presumption can be rebutted only by very strong evidence of conclusive nature. In the case of Jaswant Singh *versus* Mangal Das published in the *Gazette of India*, dated 7th April 1954 at page 593, the Delhi Tribunal went so far as to observe "An election in which one or more qualified candidates are prevented from contesting the same by reason of the

improper rejection of the nomination papers of such candidates is not an election contemplated by law and consequently must in the words of Section 100 of the R. P. Act be declared void".

In the present case respondent No. 1 has examined 16 witnesses (P.Ws. 2 to 7, 9 to 13, 18, 26, 31 and 38) to prove that Hiralal and Motilal had absolutely no chance of success at the bye-election even if their nomination papers have been accepted by the Returning Officer. Pancham Lal (R.W. 9) has further admitted before us that he would not have contested the election even if his nomination paper had been found to be valid by the Returning Officer. Before we proceed to examine the respondent's evidence in proof of his contention that Hiralal and Motilal had no influence upon the electors of Rewa constituency, the clear law on the point is that a Tribunal cannot base its decision of such an issue on sound materials. Evidence available on such an issue would be the opinions of witnesses supposed to be conversant with the conditions prevailing in the constituency on or about the election date. The opinions of these witnesses about the chances of success would be based on a series of assumptions which may or may not be correct and to test the correctness of those assumptions would involve admitting of an amount of evidence which in the end would lead now here.

Coming to the evidence of the respondent's witnesses in regard to Motilal and Hiralal and Pancham Lal having no influence upon the electors of Rewa Municipality, it has been admitted by R.W. 6 that Motilal was returned twice to Rewa Municipal Board on the first occasion from Ward No. 2 and next from Ward No. 8. Similarly Pancham Lal (R.W. 9) also was twice returned to the Board. R.W. 9 has further admitted before us that Motilal had some influence in his ward at the time of the last bye-election. This witness at the time of the scrutiny of his nomination paper belonged to Joshi's group inside P.S.P. He was set up by the said group of Shri Jagdish Chandra Joshi which worked separately till the arrival of Dr. Lohiya, a few days before the date of poll. Dr. Lohiya ironed out the difference between the two groups of the P.S.P. Had this difference been not made up at the intervention of Dr. Lohiya, Pancham Lal would have contested the election provided his nomination paper had been accepted. Hence we are not prepared to accept the respondent's contention of Motilal and Pancham Lal having no influence upon the electors of the constituency. Even if each of these persons had secured a few hundred votes, the result of the election and statements contained in form Nos. 14 and 16 would have been different. As has been held by various Tribunals the entire electorate is completely deprived of exercising their choice and franchise in favour of qualified candidates by reason of the rejection of their nomination papers. Hence we are firmly of the opinion that the result of election has been materially affected by rejection of the nomination papers of the persons named above. We decide this issue accordingly.

Issue Nos. 8 and 10(a) and (b).—These issues have not at all been passed by the petitioners at the time of argument. Rather the petitioner's contention to the effect that female voters described by the names of their respective husbands whose names had been ordered to be struck off the electoral rolls, were wrongly allowed to cast their votes is sufficiently negated by the following statements of their own witness (P.W. 30) who acted as the Presiding Officer of the polling booth in R.T. College:—

"We had received instructions from the Election Commission, India under letter No. 47—51, dated 30th December 1951. According to the said instructions we were directed to allow female voters who were described as wives of so and so to allow them to vote after verifying their identity with reference to their husbands names".

Hence we find that there had been no improper acceptance of votes and as such the election is not at all affected by any improper reception of votes.

Issue No. 9(a) and (b).—Allegation forming the basis of this issue are contained in para. 15 of the petition supplemented by list 'E' of the list of particulars, containing 11 items of objections all of which are denied by the respondent No. 1, in para. 11 of the written statement wherein it was further pleaded that the petitioners' allegations on this point were vague and not clear and therefore liable to be struck off. We have very carefully examined the return of election expenses filed by respondent No. 1 in form No. 28 supported by vouchers and receipts as far as possible, and are of the opinion that they have not been proved by the petitioners to be false in any material particulars. It is no doubt correct that regular book of account which the respondent No. 1 stated was maintained by him, as required by section 44 of the R. P. Act, has been produced before the Tribunal at a later stage, as it was alleged that it could not be traced by him, but this fact alone will not go to prove that the return on form No. 28 filed by him is false in material particulars.

On the receipt side the respondent No. 1 has shown a total sum of Rs. 2,597/9 which has not been shown to be incorrect as alleged in para. 2 of list 'E' of the list of particulars. Similarly there is no basis for the allegations in para. 3 of list 'K' that entries in part (ka) of form 26 are wrongly entered on mere surmises. Descriptions of payees and expenses incurred on the agents and workers have been shown in Ex. R.W. 31/7 attached with form No. 26 under the signature of Shri Janardan Prasad R.W. 31 who was the Joint Secretary of V. P. Praja Socialist Party to which the respondent No. 1 belonged and have not been ignored or concealed as alleged in para. 4 of list E. As for the expenses incurred over Sardar Narbada Prasad Singh, Dr. Lohiya, Shri Radhey Shyam Pathak, Saligram Jaiswal, Kalyan Chandra Mohilay, Ram Chandra Shukla, prominent members of the Socialist Party who came from Allahabad, it has been explained by respondent No. 1 that they are included in the sum of Rs. 1,486/6/- which he has shown as received from Sardar Narbada Prasad Singh on 23rd May 1953, in the receipt part of form No. 26, as all these persons stayed with and were fed by Sardar Narbada Prasad Singh himself. There was thus no omission or concealment as alleged in para. 5 of list E in part (Gha) of form No. 26.

Other allegations contained in paras. 6 and 7 of list 'E' about receipts and vouchers are too general and vague and expenses on telegrams and telephones calls are supported by proper receipts and there are no omissions or mis-statements as alleged in para. 8 of the list. As for the cost of petrol and Mobil oil etc. referred to in para. 9 of the list, the details given in Ex. R.W. 31/8 signed by Shri Janardan Prasad, R.W. 31, and included in the sum of Rs. 1,486/6 shown as received from Sardar Narbada Prasad Singh tally with the figures given by the petitioners' own witnesses Shri Sarat Kumar Dubey, P.W. 35, Munim of M/S. Tarachand Ramniwas of Burmah Shell petrol dealers of Rewa. The over-writings and cuttings objected to in para. 10 of list 'E', were necessitated by the inclusion of a further cost of Rs. 2/8/- on 18th July 1953 on the purchase of another stamp paper for the second declaration required to be made with the filing of form No. 26 and by refund of Rs. 250 on account of security deposit which was made to the respondent No. 1 on his being declared duly elected. Thus the total amount paid did not in fact exceed the total amount in the receipt side as alleged in para. 11 of the list 'E'.

Great reliance was, however, placed by the petitioners on Ex. P.W. 36/4 filed by Suraj Bali Singh, petitioner No. 1, on this case on the day of the statement before the Tribunal as P.W. 36 on 9th March 1954. This document purports to be a letter signed by Sardar Narbada Prasad Singh and addressed to one Dubey Ji on 31st May 1953 in which a large sum of money exceeding Rs. 5,000 is alleged by him to have been spent in the election of respondent No. 1 over the travelling, feeding and entertainment of numerous workers of the P.S.P. who came from outside to work for respondent No. 1 and over the cost of petrol used by motor vehicles. This letter was alleged by this witness to have been secured from one Shri Mohan Singh Karchuli on 19th February 1954 in fulfilment of an earlier promise to furnish proof of the fact that a far larger sum than Rs. 4,000 the authorised expenditure for this election, was spent on behalf of respondent No. 1. Neither Shri Mohan Singh Karchuli nor Shri Dubey Ji the addressee of this letter nor even its scribe have been produced before us and looking to the very suspicious circumstances in which this letter is said to have been obtained and produced before us, it is not such as to inspire any degree of confidence. It is contended on behalf of the petitioners that the respondent No. 1 has not produced Sardar Narbada Prasad Singh, to contradict the assertion of P.W. 36 Shri Suraj Bali Singh, which stands un rebutted and must therefore be accepted as correct. We see no force in this argument as we are not satisfied with the genuineness of this document nor do we know under what circumstances it was subscribed if at all, by Sardar Narbada Prasad Singh.

On a careful survey of the entire evidence we find the allegations of the petitioners on this point as not proved and hold that the return of election expenses filed by respondent No. 1 is not false in material particulars. We, therefore, decide this issue in favour of respondent No. 1 and against the petitioners.

Issue No. 11.—This issue has already been decided by us by our order, dated the 27th January, 1954.

Issue Nos. 12(a) and (b) and 13(a) and (b).—Both these issues have been abandoned by the contesting respondent. The present petitioners had nothing to do with the filing of the nomination papers or their scrutiny. So by no stretch of imagination can the principle of estoppel operate against them.

List 'D' has been verified afterwards under order dated 10th December 1953. The issue as a whole is therefore decided in petitioners' favour.

Issue No. 14.—In view of our clear findings on issue No. 7 to the effect that the nomination papers of Hiralal, Motilal and Pancham Lal were improperly rejected

by the Returning Officer and that the result of the bye-election was materially affected thereby, as also on issue No. 4 relating to the use of station wagon No. USJ 4797 for carrying female voters to the polling booth in Ghoghar School, we are constrained to declare the election of respondent No. 1 to V. P. Assembly to be void. The petitioners therefore are entitled to the relief claimed by them.

HENCE ORDERED

That the petition be allowed and the election of Respondent No. 1 to V. P. Legislative Assembly at the bye-election held on 31st May 1953, be declared void. Respondent No. 1 to pay Rs. 100 as costs to the petitioners.

Lal Ramesh Pratap Singh, Petitioner No. 3, with Shri R. N. Misra Pleader appeared for the petitioners.

Shri Keshau Prasad Shukla Pleader appeared for Respondent No. 1.

Announced.

(Sd.) E. A. N. MUKARJI, *Chairman.*

(Sd.) J. K. KAPOOR, *Member.*

(Sd.) U. S. PRASAD, *Member.*

The 25th May, 1954.

ANNEXURE

Copy of order passed by Election Tribunal, Vindhya Pradesh at Rewa on 27th January, 1954, in Election Petition No. 1/15 of 1953.

Respondent No. 1 has put in an application that issue No. XI should be decided before parties are ordered to submit their lists of witnesses. We have heard counsel for parties on this point and we proceed to give our decision on issue No. XI which runs as follows:—

Issue No. XI.—"Are the allegations in paras. 9(a) (iii) and 9(a) (iv) and paras. 14, 15 and 16 and lists D and E vague, general and ambiguous and therefore liable to be struck off?"

As regards para. 9(a)(iii) the petitioners have stated that their evidence will be restricted to particulars given in list A. We notice that in the relevant portion of list A relating to this para. some particulars are given. Hence we find that it is not vague and is allowed to stand. Of course the petitioners' evidence will be restricted to the particulars given.

As regards para. 9(a)(iv) of the petition the list A does not contain full particulars. Petitioners are, therefore, putting in an application for permission to put in further and better particulars. This application will be considered and disposed of in due course.

Para. 14 relates to the improper reception of votes cast by persons about whom it is alleged that they were not voters whose names existed on the electoral roll. Relevant list of particulars is D. The names of such voters could not be within the knowledge of the petitioners. They can only be found out on the receipt of the marked electoral roll which have been sent for and when they will be inspected by us. Hence this para. 14 and list D are allowed to stand. Evidence will be restricted to such women workers only whose names are disclosed from marked electoral roll as having voted in spite of the fact that their names have been previously struck off.

Para. 15 and list E relate to return of election expenses. Certain details are given in list E which we consider to be sufficient.

Para. 16 of the petition raises a question which has to be decided by us on the basis of facts alleged in other paras. The issue is decided accordingly.

(Sd.) E. A. N. MUKARJI, *Chairman.*

(Sd.) J. K. KAPOOR, *Member.*

(Sd.) U. S. PRASAD, *Member.*

[No. 82/15/53/16065.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.